



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: ACC Construction Co., Inc.

File: B-288934

Date: November 21, 2001

David E. Hudson, Esq., Hull, Towill, Norman, Barrett & Salley, for the protester.
James F. Archibald, III, Esq., Bradley Arant Rose & White, for Caddell Construction Co., Inc., an intervenor.
Susan K. Weston, Esq., William A. Hough, Esq., and James R. Thornton, Jr., Esq., Department of the Army, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the agency's evaluation of the protester's proposal was reasonable and consistent with the terms of the solicitation, and where the solicitation provided that the combination of technical evaluation factors was significantly more important than price, the agency reasonably selected for award a higher-priced, technically superior proposal.

DECISION

ACC Construction Co., Inc. protests the award of a contract to Caddell Construction Co., Inc. under request for proposals (RFP) No. DACA21-01-R-0043, issued by the Department of the Army, United States Army Corps of Engineers, to construct the Separate Battalions Barracks Complex, Phase I, at Fort Bragg, North Carolina. ACC, which submitted the low-priced proposal, challenges the agency's evaluation of its proposal and the agency's decision to award to a firm submitting a higher technically rated, higher-priced proposal.

We deny the protest.

BACKGROUND

The RFP, issued on June 21, 2001, contemplated the award of a fixed-price contract to the offeror whose proposal represented the best value to the government, considering technical evaluation factors (past performance, experience, and

management effectiveness) and price. The RFP provided that the technical evaluation factors, when combined, would be considered significantly more important than price, and only as proposals became more equal in technical merit would price become the determining factor for award. RFP at 8. The RFP advised that since the agency intended to evaluate proposals and award a contract without conducting discussions, an offeror's initial proposal should contain the firm's best terms from a technical and price standpoint. RFP at 17.

Five firms, including ACC and Caddell, submitted initial technical and price proposals by the closing time on August 14. Each member of the agency's source selection evaluation board (SSEB) individually evaluated each technical proposal submitted; the SSEB then met as a group and assigned an overall consensus rating to each technical proposal. (According to the agency's source selection plan, the consensus adjectival ratings were outstanding, above average, satisfactory, marginal and unsatisfactory; risk ratings were high, moderate, and low.) At this time, without factoring in price, ACC's technical proposal (rated satisfactory, low/moderate risk) was ranked fourth overall and Caddell's proposal (rated outstanding, low risk) was ranked first overall. Agency Report (AR), Tab 8, SSEB Evaluation Memorandum, at 2.

More specifically, and as relevant here, ACC proposed a project manager in accordance with the requirements of the RFP, but the SSEB viewed as a weakness ACC's failure to dedicate this individual as an on-site project manager. In addition, while ACC provided an extensive list of projects performed over the last 5 years--its two most expensive projects involved multi-building barracks renewal and barracks replacement at Fort Benning, Georgia, and were valued at approximately \$24 million and approximately \$39 million--the SSEB viewed as a weakness ACC's lack of large scope/size construction projects similar to the approximate \$60 million project requirements contemplated by this RFP. AR, Tab 8, ACC Technical Evaluation, at 1-3.

In contrast, Caddell proposed an on-site project manager, which the SSEB viewed as a proposal strength. Moreover, the SSEB viewed as a strength Caddell's experience in constructing similar multi-building facilities, for example, barracks at Fort Bragg, federal penitentiaries in Texas, Louisiana, and Kentucky, and a Veterans Affairs medical center in Tennessee; these projects individually ranged in value from approximately \$48 million to approximately \$120 million. AR, Tab 8, Caddell Technical Evaluation, at 1-3.

After evaluating technical proposals, and in order to establish final overall rankings, the SSEB then considered each offeror's proposed price. ACC submitted the low price (\$60,752,239); Caddell's price (\$63,064,000) was approximately 3.8 percent higher than ACC's price. Because ACC submitted the low price, its proposal

received a final ranking of second overall.¹ Caddell's technically superior, higher-priced proposal received a final ranking of first overall. AR, Tab 8, SSEB Evaluation Memorandum, at 2-3. The SSEB recommended that the award be made to Caddell on the basis of its initial proposal without conducting discussions.

The contracting officer, who served as the source selection authority, determined that Caddell's technically superior, higher-priced proposal represented the best value to the government, consistent with the terms of the RFP, which provided that the combination of technical evaluation factors was significantly more important than price. The contracting officer believed that it was worth paying a 3.8 percent price premium to Caddell because, among other reasons, Caddell proposed an on-site project manager and the firm demonstrated its experience and successful performance in completing numerous large-scale, high dollar value construction projects similar to the project requirements of this RFP. On September 21, the contracting officer awarded the contract to Caddell. AR, Tab 7, Source Selection Decision.

ISSUES AND ANALYSES

ACC, which does not challenge the evaluation of Caddell's technical proposal, complains that the SSEB improperly used an unstated evaluation factor—dedication of an on-site project manager—to downgrade its technical proposal. We disagree.

In reviewing an agency's evaluation of proposals, our Office will question the agency's evaluation only where it violates a procurement statute or regulation, lacks a reasonable basis, or is inconsistent with the stated evaluation criteria for award. B. Diaz Sanitation, Inc., B-283827, B-283828, Dec. 27, 1999, 2000 CPD ¶ 4 at 6. We conclude that the agency reasonably evaluated ACC's proposal consistent with the terms of the RFP.

Here, the RFP's management effectiveness technical evaluation factor included a subfactor captioned "Organizational Chart/Structure and Key Personnel." Under this subfactor, offerors were asked to provide, among other things, names and titles of proposed key personnel (identified in the RFP as the construction project manager, site supervisor, quality control system manager, and safety program manager), as well as their specific assignments on this project. In its proposal, ACC named its proposed project manager, but did not indicate that the project manager would be an on-site position.

¹ ACC is factually incorrect in asserting that the agency failed to take into account its low price. As shown above, when price was considered, ACC's overall ranking improved from fourth to second.

We believe the SSEB reasonably assigned a satisfactory rating to ACC's proposal for the referenced subfactor because the firm did no more than satisfy the minimum RFP requirement to propose a project manager. (In contrast, Caddell received an above average rating for this subfactor because, for example, it proposed an on-site project manager, thus demonstrating an approach with more organizational control and on-site decisionmaking.) In our view, the SSEB's recognition that ACC did not propose an on-site project manager does not constitute the use of an unstated evaluation factor, but rather, reasonably reflects the SSEB's assessment of ACC's proposed organizational approach for purposes of successfully performing the project requirements.

In ACC's comments on the agency's administrative report, the firm's president states that at all times, ACC planned to have an on-site project manager, just as the firm did on its other barracks projects. ACC's president asserts that had the agency inquired, ACC would have furnished this information, explaining that since the RFP did not specifically require an on-site project manager, ACC did not list the project manager as an on-site position in its initial proposal. Protester's Comments, Affidavit of ACC's President, Oct. 29, 2001.

ACC is essentially arguing that prior to award, the contracting officer should have conducted discussions regarding perceived weaknesses in the firm's initial proposal. Here, however, the RFP advised offerors that the agency intended to evaluate proposals and award a contract without conducting discussions. As a result, the RFP specifically advised that an offeror's initial proposal should contain the firm's best terms from a technical and price standpoint. In these circumstances, where ACC was on notice that it might not have an opportunity to amplify the contents of its initial proposal prior to award, it was incumbent upon ACC to submit an initial proposal adequate for evaluation, that is, ACC was responsible for providing a complete description of its organizational approach within the four corners of its initial proposal. We have no basis to object to the contracting officer's decision not to discuss with ACC perceived weaknesses in the firm's initial proposal prior to making award. SDS Int'l, B-285822, B-285822.2, Sept. 29, 2000, 2000 CPD ¶ 167 at 11 n.4.²

² The RFP also included a provision that stated that price would be a factor in establishing the competitive range prior to conducting discussions. RFP at 8. To the extent ACC maintains that this provision required the agency to conduct discussions and is, therefore, inconsistent with the RFP provision stating that the agency intended to award on the basis of initial proposals without conducting discussions, ACC was required to protest this alleged solicitation impropriety prior to the closing time for receipt of initial proposals, not after award. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2001). In any event, we point out that no competitive range was established in this procurement, no discussions were held, and the award was

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ACC next complains that in evaluating the similarity of its prior experience on large scope/size projects, the SSEB failed to recognize its performance of two large-scale barracks projects with an aggregate value of more than \$63 million. This complaint, however, is not supported by the contemporaneous evaluation record.

In this regard, the record clearly shows that the SSEB recognized ACC's recent barracks construction experience by assigning an above average rating to ACC's proposal for the large scope/size subfactor under the experience technical evaluation factor. AR, Tab 8, ACC Technical Evaluation, at 2. While ACC aggregates the values of its two prior barracks projects (doing so for the first time in its comments on the agency report), we believe the SSEB reasonably viewed the individual project values as presented by ACC in its initial proposal (approximately \$24 million and approximately \$39 million)³ as not being "near the size" of the approximate \$60 million value of the current barracks requirements. *Id.* On this record, we have no basis to question the reasonableness of the SSEB's decision not to assign a higher (outstanding) rating to ACC's proposal for the large scope/size subfactor.⁴

Finally, ACC believes that as the low-priced offeror, it should have received the award and that the price premium associated with Caddell's technically superior proposal was not justified.

In a negotiated procurement, where the solicitation does not provide for award on the basis of the lowest priced, technically acceptable proposal, an agency has the discretion to make an award to an offeror with a higher technical score and a higher

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made on the basis of Caddell's initial proposal--all actions consistent with the terms of the RFP.

³ We note that the SSEB did not aggregate the values of Caddell's prior construction projects, which individually ranged from approximately \$48 million to approximately \$120 million.

⁴ ACC alleges that at the post-award debriefing, the contract specialist made a comment that ACC currently had too much work; ACC speculates that this comment, which it apparently viewed as being negative, constituted an unstated evaluation factor. The contract specialist, however, was not a member of the SSEB and there is no evidence in the contemporaneous evaluation record that the SSEB downgraded ACC's proposal based on the amount of work ACC had. Rather, the record shows that the SSEB recognized that over the last 5 years, ACC worked on more than 10 large (over \$10 million each) military projects, most of them in the Savannah, Georgia area. The SSEB noted that ACC had a wealth of experience working for the federal government, and, accordingly, assigned an outstanding rating to ACC's proposal for the military work experience subfactor.

price where it reasonably determines that the price premium is justified and the result is consistent with the evaluation criteria. B. Diaz Sanitation, Inc., supra, at 8.

The RFP stated that the combination of technical evaluation factors was significantly more important than price in determining the proposal representing the best value to the government. As discussed above, we believe the SSEB reasonably evaluated ACC's technical proposal as satisfactory overall, while it evaluated Caddell's proposal as technically superior. On this record, we have no basis to question the contracting officer's decision, consistent with the terms of the RFP, to pay a price premium to Caddell in order to obtain a contractor which, among other things, proposed an on-site project manager and had an extensive record of successful performance of similar large-scale construction projects.

The protest is denied.

Anthony H. Gamboa
General Counsel